



**SIERRA  
CLUB**  
FOUNDED 1892

San Francisco Bay Chapter  
Serving Alameda, Contra Costa, Marin and San Francisco Counties

June 2, 2014

Mr. Larry Goldzband  
Executive Director  
Bay Conservation and Development Commission  
455 Golden Gate Avenue, Suite 10600  
San Francisco, CA 94102-7019

**Re: June 5, 2014 Board Meeting,  
Item 8-Potential litigation regarding the condemnation action filed by the United  
States General Services Administration with respect to McKay Avenue in the City  
of Alameda, Alameda County**

Dear Executive Director Goldzband:

The Sierra Club has opposed the U.S. Department of Justice's (DOJ) and General Services Administration's (GSA) filing of an eminent domain proceeding to take California State Park property located in Alameda, California for the benefit of a private developer. The Sierra Club is deeply troubled by the DOJ and GSA's intent to take public land for private use. We urge BCDC to file a legal action against the GSA in regard to the above matter.

The Sierra Club understands that the Bay Conservation and Development Commission (BCDC) has been designated by the state and under federal law to be the Coastal Zone Management Act authority for the Bay. The Club assumes this designation, under the Federal Coastal Zone Management Act of 1972, provides BCDC with Federal standing to challenge the GSA eminent domain action. In a January 27<sup>th</sup> letter to the GSA, BCDC indicates their jurisdiction includes McKay Avenue as part of the "waterfront park" which is Robert W. Crown Memorial State Beach including McKay Avenue. If the DOJ and GSA "take" McKay Avenue via eminent domain, that should be considered a federal "development project" which requires BCDC's concurrence by their federal coastal management designation.

Given that DOJ and GSA have already filed eminent domain proceedings without the concurrence of BCDC, this appears to be an effort to skirt federal environmental protection laws. The Sierra Club believes it is incumbent on BCDC to intervene in these proceedings.

Paraphrasing California Attorney General Harris, this taking is not supported by sufficient congressional authority and is not for a "public use" within the meaning of the Takings Clause. It is difficult to see how the DOJ will convince a federal court that a state park owned street and sidewalk already devoted to a "public use" still necessitates the federal condemnation of it. Further, it is difficult to see how the DOJ can justify moving forward with eminent domain proceedings without the explicit

concurrence of the agency (BCDC) with direct Federal Coastal Zone Management Act authority. In short, this taking is not defensible.

Moreover, the GSA and DOJ action is illegal because they failed to obtain BCDC's concurrence. Therefore, the Sierra Club urges BCDC to file suit to halt this illegal action. The State of California has already told the GSA and DOJ that it will oppose the eminent domain action, and the East Bay Regional Park District has filed suit over the city's failure to comply with CEQA over the city's illegal rezoning of this property.

Furthermore, Friends of Crown Beach and Sierra Club have successfully circulated an initiative to rezone the property to stop the GSA's transfer. The city just certified that there were more than sufficient signatures to put this matter on the ballot for November, 2014.

The citizens of Alameda wrote this initiative because they were incensed that the city manager and city council went back on their promise to get the property transferred to the East Bay Regional Park District as park land. The people of Alameda did not like the fact that a deal was cut to rezone the property to housing so a developer could acquire the property from GSA. This deal is directly contrary to what the city had told the citizens in the past would happen to this property.

Sincerely yours,

Norman La Force, Chair  
Sierra Club East Bay Public Lands Committee and  
Legal Chair, San Francisco Bay Chapter